IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

Ramesh Chandra

vs

Labour Court & Anr.

S.B. CIVIL WRIT PETITION NO.6396/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 15th December,2006

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ, J.

Mr. Vijay Mehta, Advocate, for the petitioner.
Mr. Rameshwar Dave, Dy. Government Advocate, for the respondents.

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BY THE COURT:

By this writ petition the petitioner has challenged the award dated 27.1.2003 passed by the learned Labour Court, Jodhpur upon reference an industrial dispute to it by notification issued by the appropriate Government on 8th Sept., 1999. The reference was made on the question whether the removal of the petitioner by the respondent from their services on 1.1.1998 was illegal and if not what relief was he entitled to.

The case set up by the petitioner before the labour court

was that he was engaged by order of the management on 1.8.1994 for typing work by verbal order. The management has not paid payment of his typing bills for the period for August, 1994 to Dec., 1994 accepting for the period from Nov., 1996 to July, 1996. His contention was that he had completed 240 days in the employment of the respondent in the calender year preceding the date of his removal. The respondent however did not comply with the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947). Prior to his removal neither any notice nor notice pay was given to him nor was he paid compensation. The management did not comply with the provisions of Section 25G of the Act of 1947 in that the persons appointed in service subsequent to the petitioner have been retained while he was removed.

The case of the petitioner was contested by the respondents who in their reply to his claim petition contended that the workman was never appointed in their service by verbal order whatsoever nor the petitioner was engaged for typing work on regular basis. He was a commercial typist and therefore as and when necessity arose, he was given job work on rate basis and that too on his own application. The payment of his typing charges was made against his own hand receipt.

There was no relationship of mater and servant. The appointment on the post of typist is made on the basis of recommendation of the selection commission subject to a candidate possessing requisite qualification. The claim of the workman was therefore liable to be dismissed.

While the petitioner produced an affidavit in support of his case, the respondent produced affidavit of one Prabhulal. The petitioner did not produced any documentary evidence but the respondents produced Photostat Copies of the hand receipts given by the petitioner for payment of typing on rate basis. The learned labour court after evaluation of the evidence of the case and hearing arguments answered the reference in negative holding that the petitioner was not workman because he was not appointed by the respondents and therefore he was not entitled to any relief. Feeling aggrieved by the aforesaid order the present writ petition.

I have heard Shri Vijay Mehta, learned counsel for the petitioner as well as Shri Rameshwar Dave, Dy. Government Advocate.

Shri Vijay Mehta, learned counsel for the petitioner has argued that the learned labour court has erred in law while

holding that the petitioner was working of typing on job work basis because once it was established that the work of typing was being taken by the respondent and they have also supplying papers, ribbon carbon etc. Even if it is taken that he was being paid on commercial rate basis for per typed page, this much is proved that he was doing work under the control and supervision of the respondent no.2 and was therefore workman within the definition of Section 2(s) of the Act of 1947. He argued that when effective control and supervision was exercised by the respondent no.2 that was strong proof in his favour indicating the relationship of master and servant. The workman used to attend the office every day. The learned labour court failed to appreciate the number of judicial pronouncements cited before it in true perspective. Learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court in Dharangadhra Chemical Works Ltd. VS. State of Saurashtra & ors AIR 1957 SC 264., The State of Assam & Ors Vs. Kanak Chandra Dutta, AIR 1967 SC 884 and Silver Jubilee Tailoring House & Ors Vs. Chief Inspector of Shops & Establishment & Anr. AIR 1974 SC 37 and on the authority of these judgments argued that the relationship of master and servant between the petitioner and respondent was proved. It was therefore argued that the writ petition may be allowed.

On the other hand Shri Rameshwar Dave, learned Dy. Government Advocate argued that the award passed by the learned Labour Court is perfectly legal and justified. The learned labour court has made correct evaluation of the evidence on record and has rightly concluded that petitioner was never appointed in service of the management and that he was merely given the job work on commercial basis and was paid for per typed page against his own written receipts. When there was no appointment either by written order or by oral then there was no question of violation of Section 25F and 25G of the Act of 1947. The workman utterly failed to prove relationship of mater and servant. Learned labour court was thus perfectly justified in answering the reference in negative. It has therefore been argued that the writ petition may be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the record.

In my considered view on the basis of material available on record and the kind of evidence led, the labour court did not commit any error apparent on the face on record in concluding that the petitioner workman was not an employee of the

respondent management. In fact, no evidence was led by the petitioner before the learned labour court except his own affidavit. He could not produce a single document to substantiate his claim that he was employee of the respondent no.2 or that he was appointed by the respondent no.2. On the other hand, the management produced hand written receipts of the petitioner,which indicated the payment made to him on job work basis for per typed page. The judgments relied upon by learned counsel for the petitioner before this Court were cited before the learned labour court also which the court found distinguishable on facts and I also concur with the view taken by the learned labour court in that regard.

In view of the above, I do not find any merit in the writ petition and the same is accordingly dismissed with no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-